

COMMISSION ON STATE MANDATES

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August 9, 2000

TO: All Interested Persons

FROM: Paula Higashi, Executive Director

SUBJECT: Rulemaking Proceeding
County Applications for Findings of
Significant Financial Distress

The Commission on State Mandates is initiating a new Rulemaking Proceeding to amend sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; to renumber and amend sections 1186.6, 1186.61, and 1186.62 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations; and to add new sections 1186.6, 1186.61, and 1186.62 to Title 2, of Division 2, Chapter 2.5 of the California Code of Regulations.

The proposed action is necessary to clarify and streamline the Commission process for acting on county applications for findings of significant financial distress.

We invite your participation in the Commission's Rulemaking Proceeding. Enclosed is the Commission's rulemaking packet that includes the following documents:

- Proposed Rulemaking Schedule
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Text of Proposed Regulatory Action

The Commission will accept your written comments on the proposed amendments until 5:00 p.m. on September 18, 2000. The Commission will hold a public hearing if requested by any interested person. For details on public participation, please see the enclosed Notice of Proposed Rulemaking.

If you have any questions about the proposed rulemaking, please call Nancy Patton at (916) 323-8217.

PROPOSED RULEMAKING SCHEDULE

Notice Publication Date: August 4, 2000

Close of the Public Comment Period: Monday, September 18, 2000

Comments should be sent to:

Nancy Patton
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Public Hearing Date: A public hearing will be held upon request.

Earliest Adoption Date: October 26, 2000

Contact Person: Nancy Patton
Commission on State Mandates
(916) 323-8217

TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 2.5. COMMISSION ON STATE MANDATES

NOTICE OF PROPOSED RULEMAKING

The Commission on State Mandates ("Commission") proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to amend sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; to renumber and amend sections 1186.6, 1186.61, and 1186.62 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations; and to add new sections 1186.6, 1186.61, and 1186.62 to Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations.

The proposed action is necessary to clarify and streamline the Commission process for acting on applications for findings of significant financial distress. (Welfare and Institutions Code, section 17000.6, and Government Code, sections 17525, 17527(c), and 17532.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. All written comments must be received no later than **5:00 p.m. on September 18, 2000**. The Commission will consider only comments received at the Commission's office by that time. Submit comments to:

Nancy Patton
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-8217
Facsimile: (916) 445-0278

PUBLIC HEARING

The Commission will hold a public hearing if requested by any interested person.

AUTHORITY AND REFERENCE

Government Code sections 17527(g), authorize the Commission to adopt, amend, and rescind regulations to implement, interpret, and make specific Government Code sections 17525, 17527(c), and 17532.

INFORMATIVE DIGEST

The Commission is authorized to hear matters involving county applications for findings of significant financial distress (Welf. & Inst. Code, § 17000.6). Welfare and Institutions

Code section 17000.6 authorizes the board of supervisors of any county to adopt a General Assistance rate lower than that set in section 17000.5 if it files an application with the Commission for a finding of significant financial distress, and the Commission makes that finding. Section 17000.6 establishes the process for submitting the application, the process the Commission must follow to determine whether a county is in significant financial distress, and the deadlines under which the process must be completed. The Commission's regulations provide procedures for completing this process.

The proposed regulatory action would amend sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; would renumber and amend sections 1186.6, 1186.61, and 1186.62; and would add sections 1186.6; 1186. 61, and 1186.62 to Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations. These proposed revisions are necessary to clarify and streamline the process for acting on the county applications for a finding of significant financial distress in order to meet mandated deadlines. In addition, minor consistency edits are proposed.

DISCLOSURES REGARDING THE PROPOSED ACTIONS

Mandate on local agencies and school districts:	None.
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Cost or savings to any state agency:	None.
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Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561:	None.
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Other non-discretionary cost or savings imposed upon local agencies:	None.
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Cost or savings in federal funding to the state:	None.
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SMALL BUSINESS IMPACT

Since the Commission has no jurisdiction over small business, the proposed regulatory action: (1) will have no economic impact or impose any additional regulatory restrictions on private persons or business entities; (2) will have no adverse economic impact on business including the ability of California businesses to compete with businesses in

other states; (3) will have no effect on housing costs; and, (4) will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In order to take these actions, the Commission must determine that no alternative considered by the agency will be more effective in carrying out the purpose for which each action is proposed or will be as effective and less burdensome to affected private persons or small business than the proposed actions.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The proposed regulatory actions will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSON

Inquiries concerning the substance of the proposed actions or requests for copies of the proposed text, the initial statement of reasons, the modified text, if any, or other technical information upon which the rulemaking is based may be directed to:

Nancy Patton
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-8217
Facsimile: (916) 445-0278

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, an underscored and strike-out version of the proposed text of each regulation, the initial statement of reasons, and the cases relied upon to develop the proposed regulations. A copy may be obtained by contacting the Commission Contact Person at the address or telephone number listed above. All persons on the Commission's interested persons mailing list will automatically be sent a copy of this notice, initial statement of reasons, and the text of the proposed regulations.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

If modifications are made, the modified text, with changes clearly indicated, will be available to the public, for at least 15 days before the Commission adopts the regulations.

Requests for copies of any modified regulations should be sent to the attention of Nancy Patton at the addresses indicated above. Written comments on the modified regulations will be accepted by the Commission for 15 days after the date on which it is made available.

All persons submitting written comments on the proposed regulations, or on the Commission's interested persons mailing list, will automatically be sent a copy of any modifications to the proposed regulations.

INITIAL STATEMENT OF REASONS

DESCRIPTION OF THE PUBLIC PROBLEM OR OTHER CIRCUMSTANCE THE PROPOSED ACTION IS INTENDED TO ADDRESS

The Commission on State Mandates (“Commission”) is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). Welfare and Institutions Code section 17000.6 authorizes the board of supervisors of any county to adopt a General Assistance rate lower than that set in section 17000.5 if it files an application with the Commission for a finding of significant financial distress, and the Commission makes that finding. Section 17000.6 establishes the process for submitting the application, the process the Commission must follow to determine whether a county is in significant financial distress, and the deadlines under which the process must be completed. The Commission’s regulations provide procedures for completing this process.

The proposed regulatory action would amend sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; would renumber and amend sections 1186.6, 1186.61, and 1186.62; and would add sections 1186.6; 1186. 61, and 1186.62 to Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations. These proposed revisions are necessary to clarify and streamline the process for acting on the county applications for a finding of significant financial distress in order to meet mandated deadlines. In addition, minor consistency edits are proposed.

MATERIAL RELIED UPON TO DEVELOP REGULATIONS

No technical documents, empirical studies, reports or documents have been relied upon to develop these proposed regulations.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTIONS

No alternatives have been considered to the proposed regulatory actions. Since the Commission has no jurisdiction over small businesses, there is no need to identify alternatives that would lessen any adverse impact on small business.

ADVERSE ECONOMIC IMPACT ON BUSINESS

Since the Commission has no jurisdiction over business, there is no reason to determine if these proposed regulations would have an adverse economic impact on business.

PROPOSED AMENDMENTS TO:
CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 2.5. COMMISSION ON STATE MANDATES

ARTICLE 1. GENERAL

1. AMEND § 1181.2 TO READ:

§ 1181.2. Filing of Written Materials.

(a) For each completed claim, the commission shall promulgate and make available a mailing list of the names, addresses, phone numbers, and facsimile phone numbers of the parties, and interested parties who have requested inclusion on the mailing list for a specific claim. The mailing list shall include only one representative for each party or interested party. This mailing list shall be provided by the commission to the parties and interested parties to the claim and to any person who requests a copy.

(b) Unless otherwise provided in this chapter, when party or interested party files with the commission any written material concerning a claim, it shall simultaneously serve a copy of the written material on the other parties and interested parties to the claim identified on the mailing list provided by the commission. A proof of service form approved by the commission or proof of service in compliance with Section 417.10 and following of the Code of Civil Procedure shall be included with any written material filed with the commission.

(c) Service of any written material may be effected by delivering or simultaneously mailing a copy of the document by first-class mail to each party and interested party whose name is on the commission's mailing list, and to the commission. Delivery may be made by handing a copy of the document to the addressee or leaving it in a place where the addressee may reasonably be expected to obtain actual and timely receipt. Service by mail is complete when the document is deposited in the mail. The executive director may require more expeditious service or a particular form of service in appropriate circumstances.

(d) With the prior consent of the party or interested party being served or at the direction of the commission, service may be made by facsimile transmission, by electronic mail (e-mail), internet modem, or by other ~~electronic~~ means. Such service is complete upon successful transmission.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17530 and 17553(a) Government Code.

2. AMEND SECTION 1181.3 TO READ:

§ 1181.3. Submissions of Written Materials in Other Media.

To facilitate the timely hearing of test claims, parameters and guidelines, and statewide cost estimates, a test claimant, state agency, or interested party may submit the original text of a document filed with the commission by e-mail, internet, on a predesignated computer medium or by modem or other electronic means.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553, 17554, and 17557, Government Code.

ARTICLE 6.5. APPLICATION FOR A FINDING OF SIGNIFICANT FINANCIAL DISTRESS

3. AMEND SECTION 1186.5 TO READ:

§ 1186.5. Reduction in Aid Levels; Definitions.

When the county has made a compelling case that basic county services cannot be maintained without a reduction in the level of aid established by Welfare and Institutions Code section 17000.5, the commission shall make a finding of significant financial distress.

In making such a finding, the following definitions shall apply:

(a) "Application" means a county application filed pursuant to this article requesting the commission determine that the county has made a compelling case that basic county services cannot be maintained without a reduction in the level of General Assistance aid established by Welfare and Institutions Code section 17000.5, and finding that as a result, the county is in significant financial distress, as defined in Welfare and Institutions Code section 17000.6.

(b) "Applicant" means the county that filed the request for a finding of significant financial distress.

(c) A "compelling case" sufficient to cause a finding of significant financial distress must be established by clear and convincing evidence.

~~(b)~~ (d) "Basic county services" means those services which are fundamental or essential. Such services shall include, but are not limited to, those services required by state or federal law, and may vary from county to county.

~~(e)~~ (e) "Maintained" means the level of service which the county must provide in order to adequately or effectively furnish basic county services.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6 Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

4. AMEND SECTION 1186.51 TO READ:

§ 1186.51. Filing of an Application for a Finding of Significant Financial Distress.

(a) Pursuant to Welfare and Institutions Code section 17000.6, in order for the board of supervisors of any county to obtain a finding of significant financial distress, the board of supervisors must submit a written application to the Commission on State Mandates.

(b) The applicant shall file an original and seven (7) copies of the application, including supporting documents, with the commission.

~~(c) Content of an application for a finding of significant financial distress:~~

~~-(1) (c)~~ All applications shall contain at least the following:

~~-(A) (1)~~ A table of contents, including page numbers.

~~-(B) (2)~~ A copy of a resolution from the county board of supervisors stating that compliance with the standards set forth in Welfare and Institutions Code section 17000.5 will result in significant financial distress to the county for a specified period of time, up to 36 months.

~~-(C) (3)~~ A written narrative, including a summary, detailing the relevant financial or other budgetary information and documents necessary for a county to make a compelling case that basic county services, including public safety, cannot be maintained without a reduction in the standard of aid as provided in Welfare and Institutions Code section 17000.5. The narrative shall also include:

(A) Monthly caseload of General Assistance recipients for each of the 12 months preceding the date the application is filed.

(B) Current monthly rate of the General Assistance Standard of Aid.

(C) Proposed reduced rate of the General Assistance Standard of Aid.

(D) Overview of county finances, including, but not limited to county revenue sources; budget reserve data; budget expenditures; mandated expenditures, and maintenance of effort costs.

(E) Detailed summary of program needs and expenditure flexibility, including, but not limited to department-by-department data on unmet program needs for basic county services.

(F) The County's total population at the time the application is filed.

(d) The written narrative ~~will~~ shall be submitted under penalty of perjury. In addition, the financial and other budgetary documents ~~will~~ shall be certified and authenticated under penalty of perjury.

~~-(d) Format of an application for a finding of significant financial distress:~~

~~-(1) (e)~~ Each page of the application, including all supporting documentation, shall be consecutively numbered.

~~-(2) (f)~~ The original application, including all supporting documentation, shall be unbound and single-sided.

~~-(e) (g)~~ The executive director shall notify ~~a county~~ an applicant within 10 days of receipt of an application ~~that whether~~ its application is incomplete. If the application is incomplete, the executive director and may return ~~such the~~ application to the county. An application ~~will~~ shall be considered incomplete if the elements in (b) through ~~(4) (f)~~ of this section have not been satisfied, are illegible or are not included. The requirements for commission public hearings and decisions, as set forth in subdivision (c), of Welfare and Institutions Code section 17000.6, apply only to complete applications.

(h) Within ten days of receipt of a completed application, the executive director shall notify the applicant that the application is complete, and notify the applicant of the schedule. The executive director shall also send the application to interested persons located in the applicant county.

~~(4) (i)~~ Prior to filing an application, a county may request a ~~preliminary hearing date from the commission~~ tentative date for conducting the hearing in the county. Maintaining the preliminary hearing date will be contingent upon receiving the county application on a specified date. If a complete application is not received by a specified date, a new tentative hearing date may be set.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

5. AMEND SECTION 1186.52 TO READ:

§ 1186.52 Extension of Period for Preliminary and Final Decision and Current Period of Financial Distress.

- (a) If an application is filed while another county's application is pending, the executive director may extend both the preliminary decision period up to 120 days and the final decision period up to 150 days from the filing date of the application, unless otherwise provided in the current Budget Act. If the preliminary and final decision periods are extended, any current period of significant financial distress of the applicant ~~county~~ that has been set, pursuant to subdivision (b), of the Welfare and Institutions Code Section 17000.6, shall also be extended for the same period.
- (b) Within ten (10) days of receipt of a county's application, the executive director shall provide written notice to the applicant ~~county~~ of extensions of the preliminary decision and the final decision periods and of any current period of significant financial distress of the applicant ~~county~~.

NOTE: Authority cited: Stats. 1998, ch. 324, Prov. (2), p. 622 (and subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6(b), Welfare and Institutions Code. Reference: Section 17000.6(c), Welfare and Institutions Code.

6. RENUMBER AND AMEND SECTION 1186.6 TO READ:

§ ~~1186.6~~ 1186.53. Notice.

- (a) Upon receipt of a complete application for a finding of significant financial distress, the commission shall provide to the applicant ~~county~~ a written 30-day notice of the hearing to be held in the ~~applicant~~ county.
- (b) The notice shall be publicly posted by the ~~commission or its designee~~ applicant at the county court house and one county welfare office where ~~g~~General ~~a~~Assistance recipients are generally present. The commission shall publish ~~the two notices two consecutive times~~ in a newspaper of general circulation in the county. The first notice shall be published at least 30 days prior to the hearing date. The second notice shall be published at least ten days prior to the hearing date. One of the two newspaper notices must be published at least 30 days prior to the hearing date. The cost of publishing ~~and posting such the~~ notices shall be paid for by the commission.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

7. RENUMBER AND AMEND SECTION 1186.61 TO READ:

§ ~~1186.61~~ 1186.54. Pre-Hearing Conference.

A pre-hearing conference may be scheduled by the executive director for the purpose of identifying issues and determining methods of resolving such issues. The county, and other parties known to have an interest in the county's application shall be invited to participate. This conference ~~will~~ shall not limit the issues that can be presented to or considered by the commission at public hearing.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

8. RENUMBER SECTION 1186.62 TO READ:

§ ~~1186.62~~ 1186.55. Assignment to Hearing Panels/Hearing Officers.

The chairperson may assign an application to a hearing panel consisting of one or more members of the commission, which shall act on behalf of the commission, or to a hearing officer for hearing and preparation of a preliminary decision. Assignments by the chairperson of members on such hearing panels shall be rotated among the members with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continued composition of members.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

9. ADD SECTION 1186.6 TO READ:

§ 1186.6. Request For Supplemental Information.

(a) The executive director may request supplemental information from the applicant to assist the commission in its review and analysis of the application. The applicant shall provide the supplemental information under the timeline established by the executive director.

(b) The supplemental information shall be submitted under penalty of perjury. Any attached financial or other budgetary documents shall be certified and authenticated under penalty of perjury.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

10. ADD SECTION 1186.61 TO READ:

§ 1186.61. Review of Completed Application For A Finding of Significant Financial Distress and Preparation of Staff Analysis.

(a) Before the hearing is conducted in the applicant county, the executive director shall prepare and distribute a staff analysis of the application, which shall include, but not be limited to, a review of written responses, opposition, recommendations and comments filed by interested persons, and rebuttals filed by the applicant. The staff analysis may also include a review of the applicant's revenue sources, including the applicant's flexibility in directing its resources; review of the applicant's budget expenditures, statutory relief, contingencies and fund balances, an analysis of the applicant's department-by-department evaluation of unmet need in basic county services; and a preliminary recommendation whether the commission should approve or deny the application. The staff analysis shall describe the application and assist the commission in determining whether or not to make a finding of significant financial distress.

(b) The executive director shall send the staff analysis out for comment at least ten (10) days prior to the hearing conducted in the applicant county.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

11. ADD SECTION 1186.62 TO READ:

§ 1186.62. Written Comments.

The applicant and any interested persons may file written comments concerning the staff analysis with the commission. Written comments shall be filed with the commission and simultaneously served upon the applicant and any interested persons

included on the mailing list under the timeline established by the executive director. The written comments shall be reviewed by the executive director and may be incorporated into any revised or supplemental staff analysis of the application.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

12. AMEND SECTION 1186.72 TO READ:

§ 1186.72. Reapplications.

(a) A county may file a reapplication for a finding of significant financial distress with the commission.

(b) The application and hearing procedures prescribed in Article 6.5 of these regulations shall also apply to reapplications. The applicant shall also provide the following information in its reapplication:

(1) How the applicant utilized the savings in reduction of the General Assistance Standard of Aid realized from the preceding finding of significant financial distress.

(2) The difference in the county's total population between the date the preceding application was filed and the date the reapplication is filed.

(3) Any staff changes, changes to working conditions, including but not limited to reduced work hours or salary increases or decreases that occurred since the date the preceding application was filed.

(4) Any statutes enacted since the date the preceding application was filed that change county revenue sources or expenditures, or impose new mandates upon the county.

(5) Tables that include the difference between proposed and approved unmet need in the preceding application, and the proposed unmet need in the reapplication. Tables may also be submitted by a predetermined computer medium.

(c) A county filing a reapplication of a previously approved finding of significant financial distress must present a compelling case of significant financial distress continuing since the last approved finding by the Commission.

(d) For a previously denied application, a county may file a reapplication when the fiscal situation in the county has changed.

Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

[Back to "Rulemaking"](#)